the domiciliary administrator. Indeed it is doubtful if subsequent to the appointment of the ancillary administrator there could be any assignee of the certificate from the domiciliary administrator whose claims would be superior to those of the creditors in State A. On appointment the domiciliary administrator takes title to all personalty of the decedent wherever situated.[12] But when ancillary letters of administration have been granted, title to all personalty situated within the jurisdiction appointing such ancillary administrator flows out of the domiciliary and into the ancillary administrator. As to such personalty therefore the domiciliary administrator can no longer pass a valid title.[13]

None of the cases holding that the domiciliary administrator may assign shares of stock to a transferee who may sue thereon in a foreign jurisdiction, although his transferror could not, were decided on a state of facts similar to the one here supposed.[14] In none of these cases were the rights of creditors in issue. But prior to the appointment of an ancillary administrator it would seem that the domiciliary administrator may give good title to personalty situated in other States, whether there are creditors of the decedent in such other jurisdictions or not. This would seem to follow from the fact that prior to the appointment of an ancillary administrator in State A, the domiciliary administrator in State B may receive a voluntary payment from decedent's debtor in State A, and may give a valid receipt therefor.[15]

NEGLIGENCE IMPUTED FROM THE VIOLATION OF A CITY ORDINANCE.—Generally speaking, all the citizens of any one State are governed by the same laws. While this is true, we nevertheless find in the larger towns and cities rules and regulations uncalled for in remote rural districts. These rules and regulations take the form of ordinances and by-laws enacted by the municipal government under authority expressly delegated by the State legislature; they are entitled to the same respect, and in general have the same force and effect within their restricted territory as though they were State laws enacted by the State legislature. It is essential to the comfort, peace and safety of its inhabitants and a transient public that the city government enact laws such as those regulating traffic upon its thoroughfares, safeguarding the public against obstruction of the streets and sidewalks, and supervising building operations. Conceding that these police regulations have in general the force and effect of State laws, it has been questioned whether as to them an exception should not be made

[12] Reynolds *v.* McMullen, 55 Mich. 568, 54 Am. Rep. 386; Matter of Cape May Navigation Co., 51 N. J. L. 78, 16 Atl. 191.
[13] Grayson *v.* Robertson, *supra.* [14] *Supra,* note 5.
[15] Wilkins *v.* Ellett, 9 Wall. (U. S.) 740; Citizen's National Bank *v.* Sharp, 53 Md. 521.

to the general rule of law that a person injured by an act of another done in violation of a positive law, or statute, has *ipso facto* a right of action against the offending party. At once upon an injury resulting from the violation of a city ordinance or by-law the question arises as to how far the fact of the existence of the ordinance and its violation, shall be received, if at all, as evidence of the defendant's liability, or negligence from which liability may be predicated.

In Kentucky it has been held that only the sovereign government, or the State legislature, has the power to pass laws affecting the rights and liabilities of citizens *inter sese* in civil proceedings, and that this power cannot be delegated to a municipal corporation. By this view the city may, in the exercise of the police power delegated, pass ordinances, and prescribe fitting punishment for their violation; but it cannot give to one injured by reason of the violation of the ordinance a civil right of action against the delinquent party, nor are the rights and liabilities of the parties in any wise affected, but remain as they existed in the absence of the ordinance. Accordingly, the violation of a valid ordinance will not be received in evidence in determining the question of defendant's negligence.[1]

This doctrine has never been firmly established in other jurisdictions, and is now quite generally abandoned or ignored. With the exception noted, it is agreed that proof by the plaintiff of defendant's violation of a valid city ordinance at the time of inflicting the injury may be material in determining his case. The authorities are conflicting, however, as to whether the violation of an ordinance shall be negligence *per se*, or only evidence of negligence to be submitted to the jury. Many courts taking the first view hold the defendant guilty of negligence as a matter of law, if the proximate cause of the injury was the violation of a valid city ordinance; and the plaintiff is allowed to recover without further proof of negligence, provided he was guilty of no contributory negligence, and is included in the terms of the ordinance as a party to be benefited thereby.[2] Typical of this view is the recent case of *Connell* v. *Harris* (Cal.), 138 Pac. 949. Plaintiff, while driving his automobile at night, collided with defendant's lumber wagon which failed to carry lights as required by city ordinance, by reason of which plaintiff's automobile was damaged. It was held, without discussion, that defendant's failure to carry lights as required by ordinance constituted negligence *per se*.

Other courts of high distinction neither accept the Kentucky doctrine, nor yet adopt the view just expressed; but admit the

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[1] Ford *v.* Paducah City Ry., 124 Ky. 488, 99 S. W. 355, 8 L. R. A. (N. S.) 1093.

[2] Pennsylvania Co. *v.* Hensil, 7 Ind. 569, 36 Am. Rep. 188; Gratoit *v.* Missouri Pac. Ry. Co., 116 Mo. 450, 21 S. W. 1094, 16 L. R. A. 189; Texas & Pac. Ry. Co. *v.* Brown, 11 Tex. Civ. App. 503, 33 S. W. 146; Memphis St. Ry. Co. *v.* Haynes, 112 Tenn. 712, 81 S. W. 374; Watts *v.* Montgomery Traction Co., 175 Ala. 102, 57 So. 471.

violation of an ordinance along with other evidence of negligence to be considered by the jury.[3] These latter cases quite generally make a distinction where the injury has resulted from such causes as the obstruction of a street, the erection of a dangerous structure, or the maintenance of area-ways, coal-holes, or other openings, or defective coverings over same, in violation of ordinance prohibiting their maintenance or erection.[4] While a few courts in these cases have shown an inclination to regard the violation of the ordinance only as some evidence of negligence, the great weight of authority is to the effect that the fact of its existence and violation renders unnecessary the proof of negligence.[5] The ground of these decisions—not always expressly stated—is that such menaces to the public safety, if created or maintained in violation of the municipal law, are in themselves public nuisances, rendering the delinquent author thereof liable to any person injured thereby and who has himself not contributed to the injury. With this qualification, it seems that the compromise view, allowing the violation of an ordinance to be considered by the jury as some evidence of negligence, but not negligence *per se,* is supported by the weight of authority, and is at least expressive of the modern tendency.[6]

The question of liability of abutting lot owners for injuries caused from a failure to repair streets, or to remove snow and ice from the sidewalks, under ordinances imposing upon them such duties (conceding that they are a valid exercise of the police power[7]), rests upon somewhat different principles. These are

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[3] Grand Trunk Ry. Co. *v.* Ives, 144 U. S. 408; Knupfle *v.* Knickerbocker Ice Co., 84 N. Y. 488; Washington Ry. Co. *v.* Corletto, 100 Va. 355, 41 S. E. 740; Shields *v.* Paul Co., 122 App. Div. 586, 107 N. Y. Supp. 604; Scott *v.* Dow, 162 Mich. 636, 127 N. W. 712. See also, United States Brewing Co. *v.* Stoltenberg, 211 Ill. 531, 71 N. E. 1081, where a violation of ordinance was held to establish a *prima facie* case of negligence. In the comparatively recent case of Southern Ry. Co. *v.* Rice (Va.), 78 S. E. 592, the violation of a city ordinance is held negligence *per se.* The court, expressly ignoring all former decisions, without warrant considers the case one of first impression in Virginia. The court's action in laying down a rule contrary to that expressed in Chesapeake & Ohio Ry. Co. *v.* Jennings, 98 Va. 70, 34 S. E. 986, and Washington Ry. Co. *v.* Corletto, *supra,* without considering these cases, is open to grave criticism. See 19 VA. LAW REG. 756.

[4] If an obstruction is placed in the street not in violation of ordinance, but after having been duly licensed, and if maintained in the manner contemplated and allowed by the license, it seems proof of negligence is necessary. See Durfield *v.* City of New York, 101 App. Div. 581, 92 N. Y. Supp. 204.

[5] Congreve *v.* Smith, 18 N. Y. 79; Calder *v.* Smalley, 66 Iowa 219, 23 N. W. 638, 55 Am. Rep. 270; Benard *v.* Woonsocket Co., 23 R. I. 581, 51 Atl. 209; Brunswick Ry. Co. *v.* Hardey, 112 Ga. 604, 37 S. E. 888, 52 L. R. A. 396; Morgan *v.* Bross, 64 Ore. 63, 129 Pac. 118.

[6] See extended note in 5 L. R. A. (N. S.) 251, *et seq.*; also for an excellent summary of the law upon the subject, LILE, NOTES ON MUNICIPAL CORP., 3 ed., 74.

[7] And this is not without some doubt; see Chicago *v.* O'Brien, 111 Ill. 532, 53 Am. Rep. 640, holding such an ordinance amounting to unequal taxation, and unconstitutional.

duties for the performance of which the municipality is primarily responsible, and are imposed upon the abutters not for the benefit of the traveling public, but for the benefit of the city itself; they are in the nature of a municipal tax. It is settled that the abutter cannot be held liable in a civil action by a private individual for injuries caused by a breach of such duties.[8] It is likewise settled that since the abutter is not directly liable to the individual, he is not liable indirectly in a suit by the city for damages which it has been compelled to pay as a result of the dangerous or unsafe condition of its streets.[9] It is to be noted, however, that if the abutter by some affirmative act renders the street unsafe for travel, or by artificial means accumulates snow and ice upon the sidewalks, he is considered as having created a public nuisance, and must abate the same, being liable to any person who, without himself contributing to the injury, is injured by reason thereof.[10]

DISCHARGE OF CONTRACTS, PARTICULARLY OF CONTRACTS TO ISSUE PASSES, BY ACTS OF LAW RENDERING PERFORMANCE IMPOSSIBLE.—The general rule governing the discharge of contracts by reason of impossibility of performance, arising subsequently to the formation of the contract, is that the mere fact of performance of the terms of the agreement proving more burdensome, unreasonable or dangerous than was contemplated, or even the fact of performance subsequently becoming impossible entirely without fault on the part of the promisor, will neither render the contract invalid nor discharge the promisor.[1] To this rule, however, there are several important exceptions, one of which is that when the subsequent impossibility of performance is the result of a change of law or of some action by or under the government, the promisor is discharged.[2]

In an early English case,[3] Lord Chief Justice Ellenborough said, "that no contract can properly be carried into effect, which was originally made contrary to the provisions of law, or which, being made consistently with the rules of law at the time, has become illegal in virtue of some subsequent law; are propositions which

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[8] Flynn *v.* Canton Co., 40 Md. 312, 17 Am. Rep. 603; Sneeson *v.* Kupfer, 21 R. I. 560, 45 Atl. 579.

[9] St. Louis *v.* Connecticut Ins. Co., 107 Mo. 92, 17 S. W. 637, 28 Am. St. Rep. 402.

[10] Covington Saw Mill Co. *v.* Drexilius, 120 Ky. 493, 87 S. W. 266, 117 Am. St. Rep. 593.

[1] Paradine *v.* Jane, Aleyn 26, 8 T. R. 267; Dewey *v.* Alpena School District, 43 Mich. 480, 5 N. W. 646, 38 Am. Rep. 206.

[2] Mercantile Exchange *v.* Blunt, 102 Me. 128, 66 Atl. 212, 10 L. R. A. (N. S.) 414; Lawrence *v.* White, 131 Ga. 840, 63 S. E. 631, 19 L. R. A. (N. S.) 966; Cowley *v.* Northern Pacific R. R. Co., 68 Wash. 558, 123 Pac. 998, 41 L. R. A. (N. S.) 559.

[3] Atkinson *v.* Ritchie, 10 East. 530.